

UNITED STATES OF AMERICA  
DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 2004-10385-MEL

UNITED STATES OF AMERICA

v.

JEROME WEEKES

MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR NEW TRIAL  
AND REQUEST FOR RULING ON CLAIM OF  
INEFFECTIVE ASSISTANCE OF COUNSEL

Now comes the defendant and moves this Honorable Court to rule on the defendant's claim of ineffective assistance of counsel. See Supplemental Memorandum in support of motion for new trial, (Doc. 100), pp. 2-3 and fn.1.

Previously, in support of the defendant's motion for a new trial, (filed pursuant to F.R.Crim.P. 33 and 28 U.S.C. §2255) trial counsel filed an affidavit in which he claimed that he believed that he sufficiently established the unavailability of Kelvin Brown at the time of trial. (Ex. 1 to Doc. 100) The Court, in its order denying the defendant's motion for a new trial (Doc. 101) has ruled that counsel failed to take sufficient steps to establish that Brown was unavailable to testify.

The steps taken by trial counsel were designed to establish Brown's unavailability and, according to the Court, those steps failed. It is uncontested that Brown's testimony was and is unavailable. Had trial counsel established, to the Court's

satisfaction at trial, that Brown's testimony was unavailable the defendant would have been allowed to tell the jury of Brown's admission. Undoubtedly, if the jury, which took several days to reach a verdict, had heard Brown's admission, Weekes probably would not have been convicted. Strickland v. Washington, 466 U.S. 668, 694 (1984)(reasonable probability that but for trial counsel's lapse, "the result of the proceeding would have been different.")

Accordingly, based on the Court's Order denying the motion for new trial, trial counsel was ineffective and on that basis the defendant is entitled to a new trial.

**Local Rule 112.1.**

The parties have discussed this motion and cannot resolve the issue raised in the motion.

**Hearing.**

There has been a hearing on the motion for a new trial and the defendant does not believe that a hearing on this motion is necessary.

Respectfully Submitted,  
JEROME WEEKES,

By his attorney:

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J. THOMAS KERNER  
MA BBO # 552373  
343 Commercial St. Unit 104  
Boston, MA 02109  
(617) 720-5509